COURT No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Central Excise Appeal No. 11 of 2005

Commissioner of Customs & Central excise,
Merrut-I

.....Appellant/Applicant

Versus

M/s Charu Steel Ltd.,
17-22 Balhadrapur, Industrial Area,
Kotdwar (Uttarakhad)

.....Respondents

Dated: 13th September, 2007

Sri Arvind Vashist, learned Assistant S.G. for the Department/appellant.
Sri Alok Singh, learned Sr. Advocate for the respondent

Coram: Hon'ble P.C. Verma, J.
Hon'ble M.M. Ghildiyal, J

This appeal under Section 35-G of the Central Excise Act has been field against the order dated 26.4.2005 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (For short, the Tribunal) in appeal no. E/2367/2004-NB(S), whereby the Tribunal allowed the appeal. The appeal was filed against the order dated 29.1.2004 passed by the Commissioner, Customs & Central Excise, Meerut-I (appellate authority).

2. Facts, in brief, are that assesses/respondents are engaged in the business of manufacturing non-alloy MS ingots chargeable to Central Excise duty on the basis of annual capacity of production under Section 3A of the Central Excise Act. Abatement of duty was claimed by the assessee under Section 3 of Section 3A of the Central Excise Act for the period from 3.5.1998 to 10.5.1998 on the ground that the factory remained closed on account of damage suffered by the furnace.

3. The order dated 29.1.2004 was passed by the Commissioner of Central Excise on the notice to show cause as to why the abatement be not refused for the period from 3.5.1998 to 10.5.1998. This show cause notice was issued on the basis of the claim submitted by the petitioner/assessee for abatement of central excise duty on production of MS ingots by the assessee for the period 3.5.1998 to 10.5.1998 on the ground that their factory remained closed on account of damage suffered by the furnace. Reply was submitted by the respondent/assessee before the Commissioner with the complete explanation. The Commissioner disallowed the abatement of duty on the ground that when the Central excise Officers visited the factory premises on 10.5.1998, which was the date of recommencement of production after the repair of the furnace, the meter was not running and was showing the same reading which was shown at the beginning of the day; though production of 2.871 MT of MS ingots were obtained by the appellants/assessee. The Commissioner did not accept the explanation of the assessee that there was a big bang heard on 7.5.1998 in the meter room with smoke emerging, on account of that meter was not working properly.

4. The Commissioner has accepted the version of the Revenue that the assessee did not inform the electricity department about the big bang, which was heard on 7.5.1998 in the meter room with the smoke emerging thereon.

5. The Customs, Excise & Service Tax Appellate Tribunal has recorded a finding that there was no dispute that all the conditions specified in Rule 96 ZO (2) were compiled with by the appellants/assessee for claiming the abatement

for the period from 3.5.1998 to 10.5.1998. A finding has also been recorded that the officer of the Central Excise department visited the factory premises on 4.5.1998 and they did not find the factory operating furnace. A finding has further been recorded by the Tribunal that there was no evidence on record to show that when the factory was supposed to be closed the appellants were manufacturing MS ingots. The Tribunal has correctly disagreed with the reasoning of the Commissioner of Central Excise, Meerut-I that the defect in meter, on account of which the meter was not running, was not an evidence to prove that the factory was running from 3.5.1998 to 10.5.1998 We fully agree with the judgment of the Tribunal as we do not find any infirmity in appreciation of fact which could result in illegality and could give rise the question of law to be decided.

6. In view of our above discussion, the appeal lacks merit and is dismissed accordingly. The judgment of the Tribunal is upheld. The question is answered against the Revenue and in favour of the assessee. There shall be no order as to costs.

(M.M. Ghildiyal, J) **(P.C. Verma, J.)**

13.09.2007 13.09.2007

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